

STATE DEPARTMENT OF EDUCATION

Chapter 43

Statutory Authority: Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C.

§ 1400

et seq. (2004)

43–243.1, Criteria for Entry into Programs of Special Education for Students with Disabilities

Synopsis:

The State Board of Education has amended R 43-243.1 in order to align state rules, regulations, and policies relating to the education of children with disabilities to the purposes and requirements of the Individuals with Disabilities Education Improvement Act of 2004 Regulation 34 CFR Parts 300 and 301.

Section-by-Section Discussion

Regulation 43-243 has been amended so as to align with the IDEA procedures for identifying children with developmental delays and with specific learning disabilities. Sections B(1) and B(2)(c)(1)–(9) of the current R 43-243.1 have been amended so that the title and definition of “Preschool Child with a Disability” will be replaced with “Developmental Delay.” The word “disability” was replaced with “developmental delay” each time it is used in this section. This aligned the category and definition with the federal category and definition.

Sections D(2)(b)–(d) and D(3)(d)–(f) were removed so that the criteria for eligibility for the category of learning disabilities aligned with the requirements in §§ 300.307–300.311 of Part B of the IDEA regulation.

Instructions:

Amend in its entirety 43–243.1, Criteria for Entry into Programs of Special Education for Students with Disabilities, to Chapter 43 regulations.

Text:

243.1, Criteria for Entry into Programs of Special Education for Students with Disabilities

A. General Requirements

These criteria for entry into programs of special education for students with disabilities will be used by all members of the multidisciplinary team, who may include school psychologists, speech-language therapists, and other persons responsible for the identification and evaluation of students with disabilities.

The federal definitions for all categories of disabilities have been used, as included in the Individuals with Disabilities Act (IDEA). All examiners, however, must be appropriately credentialed or licensed and should have completed training that is directly relevant to the assessment procedure being conducted. Examiners may administer supplementary measures such as curriculum-based assessments to gain additional information.

The categories of educable mental disability, trainable mental disability, and profound mental disability have been merged into one category called “mental disability” (MD), in line with the federal definition of the term. This incorporation has been done solely for the purposes of evaluation and initial service identification and will not affect the programming decisions that will be made for these students through the individualized education program (IEP) team. Placement of all students must be determined by the IEP team.

All evaluation procedures must ensure that the following minimal requirements are met:

1. Tests and other evaluation materials used to assess a student suspected of having a disability are selected and administered so as not to be discriminatory on a racial or cultural basis and are provided and administered in the student’s native language or other mode of communication unless it is clearly unfeasible to use that language or any mode of communication.

2. Materials and procedures used to assess a student with limited English proficiency are selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measuring the student’s English language skills.

3. A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the student, including information provided by the parent and information related to enabling the student to be involved in and progress in the general curriculum (or for a preschool child to participate in appropriate activities) that may assist in determining whether the student is one with a disability and what the content of the student’s IEP should be.

4. Any standardized tests that are given to a student have been validated for the specific purpose for which they are used and are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions, such as the qualifications of the person administering the test or the method of test administration, must be included in the evaluation report.

5. Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

6. Tests are selected and administered so as best to ensure that if a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student’s aptitude or achievement level, or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

7. No single procedure is used as the sole criterion for determining whether a student has a disability and for determining an appropriate educational program for the student.

8. The student is assessed in all areas related to the suspected disability, including, if appropriate, his or her health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

9. In the assessment of each student with a disability, the methods of evaluation are sufficiently comprehensive to identify all of the student's special education and related-services needs, whether or not they are commonly linked to the category in which the student is suspected of having a disability.

10. Each school district/agency uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors.

11. Each school district/agency uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student.

B. Developmental Delay

1. Definition

Children aged three through nine experiencing developmental delays include a child-

a. Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

b. Who, by reason thereof, needs special education and related services.

2. Eligibility Criteria

A multidisciplinary evaluation team that includes a teacher or other specialist with knowledge in early childhood education may determine that a preschool child has a developmental delay and is eligible for special education and related services, if appropriate, if the evaluation information collected from multiple sources verifies one or more of the following:

a. The child's scores on a standardized norm-referenced test are at least two standard deviations below the mean in one or more of the following five areas: cognition, communication, motor, activities of daily living, or social/emotional development (the child's scores in the area of social/emotional development will be two or more standard deviations discrepant from the mean in a maladaptive direction); or

b. The child's scores on a standardized norm-referenced test are at least one and one-half standard deviations below the mean in two or more of the following five areas: cognition, communication, motor, activities of daily living, or social/emotional development (the child's scores in the area of social/emotional development will be one and one-half standard deviations discrepant from the mean in a maladaptive direction); or

3. Evaluation

The following evaluation components are required:

a. Documentation of vision, hearing, and speech-language screening conducted within the past twelve months.

b. A developmental history, of the child that includes a summary of his or her demographic, developmental, educational, and medical history obtained from a parent or primary caregiver.

c. Documentation of a structured observation of the child in a typical or otherwise appropriate setting (wherever the child spends the majority of his or her day) by a member of the multidisciplinary evaluation team. If speech is the only disability, a pragmatics assessment must be conducted.

d. A comprehensive developmental evaluation conducted by a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist and by other appropriate professionals, as needed, utilizing norm-referenced measures. The comprehensive developmental evaluation shall include measures in the areas of cognition, communication, motor skills, activities of daily living, and social/emotional maturity administered within the past twelve months.

C. Mental Disability

1. Definition

Mental Disability means mental retardation which is defined as significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a student's educational performance.

2. Eligibility Criteria

a. A multidisciplinary evaluation team may determine that the student has a mental disability and is eligible for special education and related services, if appropriate, if the evaluation information collected from multiple sources verifies all of the following:

(1) Significantly subaverage intellectual functioning must be evidenced by scores on both verbal and nonverbal scales at least two standard deviations (+/- the standard error of measurement) below the mean on one or more individually administered intelligence test(s). Assessments must include measures of both verbal and nonverbal intelligence as appropriate for the individual student. When profile score(s) are inconsistent with significant subaverage performance, then supplementary measures of intellectual functioning must be administered.

When either verbal or nonverbal measures are deemed inappropriate due to the sensory, motor, language, or other conditions of the student, alternative procedures for obtaining a measure of intellectual functioning shall be used. The evaluator shall provide, through a written report, the nature of the substitution made as well as the rationale for invalidating the verbal or nonverbal measure.

(2) Functional limitation in adaptive skill areas as evidenced by composite scores at least two standard deviations (+/- the standard error of measurement) below the mean on a comprehensive standardized adaptive behavior measure.

(3) Limitations in preacademic, academic and/or functional academic skills is evidenced by significantly subaverage results on one or more individually administered achievement tests or significantly subaverage results on a developmental skills assessment.

(4) The student's mental disability adversely affects his or her educational performance.

b. The following score ranges must be utilized in reporting a child with a mental disability under the South Carolina Education Finance Act:

Intellectual Standard Score*

mild 48–70±

moderate 25–48±

severe 0–25±

*assumes mean of 100 and standard deviation of 15.

For funding purposes only, under the South Carolina Education Finance Act, students falling within the mild category are reported as EMH (educable mentally handicapped), and students falling within the moderate and severe categories are reported as TMH (trainable mentally handicapped).

3. Evaluation

The following evaluation components are required:

a. Documentation of vision, hearing, and speech-language screening conducted within the past twelve months.

b. A developmental history, of the student that includes a summary of his or her demographic, developmental, educational, and medical history obtained from a parent or primary caregiver.

c. One or more individually administered full scale norm-referenced measures of intelligence with appropriate reliability, validity, and standardization characteristics administered within the past twelve months by a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist. A report of the results of a full scale norm-referenced measure of verbal and nonverbal intelligence that has been directly administered by a licensed clinical or counseling psychologist with training in the assessment of children and adolescents may be accepted by the school district. This instrument must have appropriate reliability, validity, and standardization characteristics and must have been administered within the past twelve months.

d. A curriculum-based, criterion-referenced, or norm-referenced measure of preacademic, academic, and/or functional academic achievement or a developmental skills assessment individually administered by a trained examiner within the past six months.

e. A standardized measure of adaptive behavior obtained within the past twelve months from the parent or primary caretaker (or by another individual who is knowledgeable of the student, if the parent or primary caretaker is unable to provide sufficient information to complete the adaptive behavior assessment).

f. Documentation of the evidence that the student's mental disability adversely affects his or her educational performance.

D. Specific Learning Disability

1. Definition

Specific Learning disability means a disorder in one of more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

2. Eligibility Criteria

A multidisciplinary evaluation team may determine that the student has a specific learning disability if

(a) The child does not achieve adequately for the child's age or to meet state-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards:

- (1) oral expression,
- (2) listening comprehension,
- (3) written expression,
- (4) basic reading skill,
- (5) reading fluency skills,
- (6) reading comprehension,
- (7) mathematics calculation,
- (8) mathematics problem solving, and

(b)(i) The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified above when using a process based on the child's response to scientific, research-based intervention; or

(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, state-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of specific learning disability, using appropriate assessments, consistent with §§ 300.304 and 300.305 of the SBE R 43-243; and

(c) The team determines that its findings are not primarily the results of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency.

3. Evaluation

The following evaluation components are required:

a. Documentation of vision, hearing, and speech-language screening conducted within the past twelve months.

b. Data that demonstrate that prior to, or as part of, the evaluation, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel.

c. Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

d. A developmental history of the student that includes a summary of his or her demographic, developmental, educational, and medical history obtained from a parent or primary caregiver.

e. Documentation of at least one observation of the student performing in the area(s) of suspected disability by a member of the evaluation team other than the referring teacher within the past twelve months.

f. Documentation of the evidence that the student's learning disability adversely affects his or her educational performance.

E. Emotional Disability

1. Definition

Emotional Disability means an emotional disturbance defined as a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects the student's educational performance:

a. an inability to learn that cannot be explained by intellectual, sensory, or health factors;

b. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

c. inappropriate types of behavior or feelings in normal circumstances;

d. a general pervasive mood of unhappiness or depression;

e. a tendency to develop physical symptoms or fears associated with personal or school problems.

The term includes schizophrenia. The term does not apply to children who are socially maladjusted unless it is determined that they have a serious emotional disturbance.

2. Eligibility Criteria

A multidisciplinary evaluation team may determine that the student has an emotional disability and is eligible for special education and related services, if appropriate, if evaluation information collected across multiple settings and from multiple sources verifies all of the following:

a. The student is rated within the highest level of significance on a valid and reliable problem behavior rating scale (or similarly named subscale) by both a certified teacher and another adult knowledgeable of the student.

b. The student's observable school and/or classroom problem behavior is documented as occurring at a significantly different rate, intensity, or duration than the substantial majority of typical school peers, or the student is currently displaying behavior that is endangering his or her life or seriously endangering the safety of others.

c. The student's problem behavior has existed for a minimum of four consecutive months, or the student is currently displaying behavior that is endangering his or her life or seriously endangering the safety of others.

d. Documentation exists that specifically prescribed and consistently employed interventions have not resulted in significant improvement in the student's problem behavior. A certified staff member such as a special education teacher, guidance counselor or certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist with expertise in behavior management has provided consultation to the classroom teacher(s) or other appropriate staff members for a minimum of four weeks through the development of a written behavioral intervention plan. This four-week consultation period may be shortened if the student is currently displaying behavior that is endangering his or her life or seriously endangering the safety of others.

e. The student's score falls within the highest level of significance on a valid and reliable personality measure (if the administration of a personality measure has been deemed developmentally appropriate), or there exists a significant discrepancy between the observed behavior and the student's performance on the personality measure.

f. The student's emotional disability adversely affects his or her educational performance.

3. Evaluation

The following evaluation components are required:

a. Documentation of vision, hearing, and speech-language screening conducted within the past twelve months.

b. A developmental history, of the student that includes a summary of his or her demographic, developmental, educational, and medical history obtained from a parent or primary caretaker.

c. Anecdotal records collected over a period of at least ten school days within a period of thirty calendar days.

d. Documentation that the problem behavior has existed for at least four months or that the behavior seriously endangers the student's life or seriously endangers the safety of others.

e. Documentation that the consultation provided by a certified staff member with expertise in behavior management resulted in an intervention plan that was implemented for a minimum of four weeks within the past twelve months.

f. Three direct observations, in at least two different settings, both of which may be school settings, by a certified school psychologist, a licensed school psychologist or a licensed psycho-educational specialist, and/or an observer with expertise in behavior management that provide evidence that the problem behavior occurs at a significantly different rate, intensity, or duration than in a substantial majority of typical school peers.

g. Behavior rating scales completed by a certified teacher and another adult knowledgeable of the student and interpreted in consultation with a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist.

h. A valid and reliable personality measure, when developmentally appropriate, administered by a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist. A report of a valid and reliable personality measure, when developmentally appropriate, that has been directly administered by a licensed clinical or counseling psychologist with training in the assessment of children and adolescents may be accepted by the school district.

i. An individually administered norm-referenced measure of general intelligence with appropriate reliability validity, and standardization characteristics administered within the past twelve months by a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist. A report of the results of an individually administered norm-referenced measure of general intelligence that has been directly administered by a licensed clinical or counseling psychologist with training in the assessment of children and adolescents may be accepted by the school district. This instrument must have appropriate reliability, validity, and standardization characteristics and must have been administered within the past twelve months.

j. An individually administered norm-referenced measure of academic achievement obtained within the past six months.

k. Documentation of the evidence that the student's emotional disability adversely affects his or her educational performance.

E. Speech or Language Impairment

1. Definition

Speech or Language Impairment means a communication disorder such as stuttering, impaired articulation, a language impairment or a voice impairment that adversely affects a student's educational performance.

2. Eligibility Criteria

A multidisciplinary evaluation team that includes a speech-language therapist may determine that the student has a speech or language impairment and is eligible for special education and related services, if appropriate, if the evaluation information collected from multiple sources:

- a. The student demonstrates at least one of the following impairments:
 - (1) articulation impairment evidenced by either
 - (a) single or multiple production errors on a developmental scale of articulation competency,
 - (b) misarticulations that interfere with communication and attract adverse attention, or
 - (c) reduced intelligibility due to a phonological disorder or an inability to use the speech mechanism appropriately due to a motor speech disorder such as apraxia or dysarthria;
 - (2) language impairment evidenced by:
 - (a) scores of at least one and one-half standard deviations below the mean for that assess the components of language *and either*
 - (b) inappropriate, inadequate, or limited expressive or receptive language as measured by criterion-referenced testing *or*
 - (c) scores of at least one and one-half standard deviations below the mean for chronological age or developmental age on one or more standardized tests that assess language processing *or*
 - (d) limited ability to process language as evidenced by criterion-referenced testing, curriculum-based assessment, or structured classroom observations;
 - (3) stuttering or disorders of fluency evidenced by either
 - (a) excessive or atypical dysfluencies for the student's age, gender, or speaking situation, with or without his or her awareness of the dysfluencies, or
 - (b) the presence of secondary stuttering characteristics or avoidance behaviors;
 - (4) voice impairment evidenced by atypical voice quality, pitch, intensity, or resonance that
 - (a) draws unfavorable attention,
 - (b) interferes with communication,

(c) is inappropriate for age, gender, or culture, or

(d) adversely affects the speaker or listener; and

b. The student's speech or language impairment adversely affects his or her educational performance.

3. Evaluation

The following evaluation components are required:

a. documentation of hearing, vision and speech-language screening conducted within the past twelve months;

b. developmental history, which of the student that includes a summary of his or her demographic, developmental, educational, and medical history obtained from a parent or primary caregiver;

c. documentation of an oral peripheral examination conducted by a certified or licensed speech-language therapist;

d. documentation of an evaluation conducted by a certified or licensed speech-language therapist of the suspected impairment(s) as indicated by screening results:

(1) for a student who fails the articulation portion of the speech screening:

(a) an articulation measure of single-word utterances,

(b) a conversational articulation measure, and

(c) a phonological analysis, if needed;

(2) for a student who fails the language portion of the speech screening:

(a) a measure of receptive and expressive language proficiency that includes evaluation in semantics, syntax, and morphology,

(b) an assessment of social/pragmatic language functioning,

(c) a language sample, if appropriate, and

(d) a measure of language processing skills, if appropriate;

(3) for a student who fails the fluency portion of the speech screening:

(a) an assessment of the frequency of dysfluencies,

(b) an assessment of the type of dysfluencies,

(c) a description of the child's fluency patterns in another setting, and

- (d) a description of the student's secondary characteristics, if appropriate;
- (4) for a student who fails the voice portion of the speech screening:
 - (a) clearance from a medical doctor that the evaluation can take place and
 - (b) completion of a vocal characteristics checklist, a description of the student's vocal quality, intensity, resonance, and pitch;
- (5) for a preschool child: completion of a pragmatics assessment; and
- e. Documentation of the evidence that the student's speech or language impairment adversely affects his or her educational performance.

G. Deaf and Hard of Hearing

1. Definitions

Deaf means a hearing loss that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a student's educational performance.

Hard of Hearing means a hearing loss, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deaf in this section.

2. Eligibility Criteria

A multidisciplinary evaluation team that includes a certified teacher of students with hearing loss and/or a certified or licensed speech-language therapist may determine that the student has a hearing loss and is eligible for special education and related services, if appropriate, if the evaluation information collected from multiple sources the following:

- a. The degree of hearing loss, as determined by a licensed audiologist/otolaryngologist, is 20 dB or greater, either unilaterally or bilaterally, or the student has a fluctuating hearing loss, either unilaterally or bilaterally, as evidenced by a medical history (provided by a physician, preferably an otolaryngologist) of chronic middle ear disease.
- b. The student's hearing loss adversely affects his or her educational performance.

3. Evaluation

The following evaluation components are required:

- a. Documentation of vision, hearing, and speech-language screening information conducted within the last twelve months. The hearing screening requirement is waived if the audiological evaluation or medical history report meets criteria specified in items c and d below.
- b. A developmental history of the student that includes a summary of his or her demographic, developmental, educational, and medical history obtained from a parent or primary caregiver.

c. A written report of an audiological evaluation conducted within the past twelve months by a licensed or certified audiologist/otolaryngologist that includes

- (1) pure tone air and bone conduction thresholds,
- (2) speech reception thresholds or speech detection thresholds,
- (3) word recognition testing in quiet and amid noise,
- (4) tympanometry, including reflex testing when appropriate, and
- (5) aided pure tone speech results, when appropriate.

If the student does not respond to all aspects of the audiological evaluation listed above, other appropriate measures—in consultation with an audiologist/otolaryngologist must be utilized.

d. In instances where a fluctuating hearing loss is suspected, a medical history obtained from a licensed physician (preferably an otolaryngologist) documenting chronic middle ear disease.

e. A norm-referenced or criterion-referenced measure of academic achievement or developmental assessment individually administered within the past six months.

f. An assessment of receptive and expressive communication skills in the student's preferred mode.

g. Documentation of the evidence that the student's hearing loss adversely affects his or her educational performance.

A student whose primary disability is being deaf or hard of hearing impairment may also exhibit characteristics of a concomitant disability that adversely affects his or her educational progress. Evaluation in the areas of suspected disability must also be conducted in the student's preferred mode of communication by individuals with knowledge of the educational needs of students

H. Visual Impairment

1. Definition

Visual impairment, including blindness, means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

2. Eligibility Criteria

A multidisciplinary evaluation team that includes a teacher certified in visual impairment or other professionals knowledgeable of the educational needs of students with visual impairments may determine that the student has the disability of visual impairment and is eligible for special education and related services, if the evaluation information collected

from multiple sources verifies the existence of certain specific circumstances. The following criteria must be met:

a. One of the following:

(1) The visual acuity, as determined by a licensed optometrist or ophthalmologist, with correction is 20/70 or worse in the better eye.

(2) The visual acuity, as determined by a licensed optometrist or ophthalmologist, is better than 20/70 with correction in the better eye, and there is documentation of either of the following conditions: a diagnosed progressive loss of vision or a visual field of 20 degrees or less.

(3) The visual acuity is unable to be determined by a licensed optometrist or ophthalmologist, and the existence of functional vision loss is supported by functional vision assessment findings.

(4) The existence of cortical visual impairment in the student has been diagnosed by a licensed optometrist, ophthalmologist, or neurologist.

b. The student's visual impairment adversely affects his or her educational performance.

3. Evaluation

The following evaluation components are required:

a. Documentation of vision, hearing, and speech-language screening conducted within the past twelve months. The vision screening requirement is waived if a vision examination report meeting criterion specified in item c below is furnished.

b. A developmental history of the student that includes a summary of his or her demographic, developmental, educational, and current medical history obtained from a parent or primary caregiver.

c. A written report of a visual examination conducted within the past twelve months by a licensed ophthalmologist or optometrist. For diagnosed cortical visual impairment, the examination may be conducted by a neurologist.

d. A functional vision assessment conducted by a teacher certified in the area of visual impairment, a credentialed orientation and mobility specialist, or a trained diagnostician.

e. An assessment conducted by a teacher certified in visual impairment to determine appropriate literacy media and to evaluate braille skills.

f. A norm-referenced or criterion-referenced measure of academic achievement, or a developmental assessment, or an assessment of vision specific skills individually administered within the past six months.

g. Documentation of the evidence that the student's visual impairment adversely affects his or her educational performance.

Students whose primary disability is visual impairment may also exhibit characteristics of a concomitant disability that adversely affects their educational progress. When these students are not making reasonable progress, further evaluation in the areas of suspected disability must be conducted.

I. Deafblindness

1. Definition

Deafblindness means concomitant hearing loss and visual impairment, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children who are deaf or hard hearing or children with blindness.

2. Eligibility Criteria

A multidisciplinary evaluation team that includes certified instructional personnel or other professional knowledgeable of the educational needs of students with deafblindness may determine that the student is deafblind and is eligible for special education and related services, if appropriate, if the evaluation information collected from multiple sources verifies the following:

a. The student has a visual impairment as evidenced by one the following:

(1) The visual acuity, as determined by a licensed optometrist or ophthalmologist, with correction is 20/70 or worse in the better eye.

(2) The visual acuity, as determined by a licensed optometrist or ophthalmologist, is better than 20/70 with correction in the better eye, and either one of the following conditions: a diagnosed progressive loss of vision or a visual field of 20 degrees or less.

(3) The visual acuity is unable to be determined by a licensed optometrist or ophthalmologist, and the existence of functional vision loss is supported by functional vision assessment findings or

(4) The existence of cortical visual impairment in the student has been diagnosed by a licensed optometrist, ophthalmologist, or neurologist.

b. The student has a hearing loss as evidenced by either

(1) a hearing loss of greater than 20 dB, either unilaterally or bilaterally, as determined by a licensed audiologist/otolaryngologist or

(2) a fluctuating hearing loss, either unilaterally or bilaterally, as evidenced in the results of an audiological evaluation and in a medical history of chronic middle ear disease that is provided by a physician, preferably one who is an ear, nose, and throat specialist.

c. The student's deafblindness adversely affects his or her educational performance.

3. Evaluation

The following evaluation components are required:

a. Documentation of vision, hearing, and speech-language screening conducted within the past twelve months. The requirement for vision and hearing screening is waived if a written report of visual and/or audiological evaluation that meet criterion c, f, or g below is furnished.

b. A developmental history of the student that includes a summary of his or her demographic, developmental, educational, and current medical history obtained from a parent or primary caregiver.

c. A written report of a visual examination conducted within the past twelve months by a licensed ophthalmologist or optometrist. For a diagnosed cortical visual impairment, the examination may be conducted by a neurologist.

d. A functional vision assessment conducted by a teacher certified in the area of visual impairment, a credentialed orientation and mobility specialist, or trained diagnostician.

e. An assessment conducted by a teacher certified in visual impairment to determine appropriate literacy media and to evaluate braille skills.

f. A written report of an audiological evaluation conducted within the past twelve months by a licensed or certified audiologist/otolaryngologist that includes

- (1) pure tone air and bone conduction thresholds,
- (2) speech reception thresholds or speech detection thresholds,
- (3) word recognition testing in quiet and amid noise,
- (4) tympanometry, including reflex testing when appropriate, and
- (5) aided pure tone speech results, when appropriate.

(6) If the student does not respond to all aspects of the audiological evaluation specified above, other appropriate measures—in consultation with an audiologist/otolaryngologist must be utilized.

g. In instances where a fluctuating hearing loss is suspected, a medical history obtained from a licensed physician (preferably an otolaryngologist) documenting chronic middle ear disease.

h. An individually administered criterion-referenced measure of academic achievement or a developmental or ecological assessment.

i. An assessment of receptive and expressive communication skills in the student's preferred mode.

j. Documentation of the evidence that the student's deafblindness adversely affects his or her educational performance.

J. Orthopedic Impairment

1. Definition

Orthopedic Impairment means a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absences of some member, etc.) impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

2. Eligibility Criteria

A multidisciplinary evaluation team that includes an individual knowledgeable of orthopedic impairment may determine that the student has the disability of orthopedic impairment and is eligible for special education and related services, if appropriate, if the evaluation information collected from multiple sources verifies:

- a. The existence of an orthopedic impairment in the student has been diagnosed by a licensed physician.
- b. There is documented evidence that student's orthopedic impairment adversely affects his or her educational performance.

3. Evaluation

The following evaluation components are required:

- a. documentation of vision, hearing, and speech-language screening conducted within the past twelve months;
- b. developmental history of the student that includes a summary of his or her demographic, developmental, educational, and medical history obtained from a parent or primary caregiver;
- c. record of observation of at least thirty minutes in the classroom or in student's daily setting conducted by a member of the evaluation team who is knowledgeable of orthopedic impairments;
- d. a written report of a medical examination conducted within the past twelve months by a licensed physician that provides a diagnosis and description of the student's current physical status;
- e. a norm-referenced or criterion-referenced measure of academic achievement or developmental assessment individually administered within the past six months; and
- f. documentation of the evidence that the student's orthopedic impairment adversely affects his or her educational performance.

K. Other Health Impairment

1. Definition

Other Health Impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome and adversely affects a student's educational performance.

2. Eligibility Criteria

A multidisciplinary evaluation team that includes an individual knowledgeable of other health impairments may determine that the student has the disability of other health impairment and is eligible for special education and related services, if appropriate, if the evaluation information collected from multiple sources verifies:

- a. The existence of health impairment in the student has been diagnosed by a licensed physician.
- b. There is documented evidence that student's health impairment adversely affects his or her educational performance.

3. Evaluation

The following evaluation components are required:

- a. documentation of vision, hearing, and speech-language screening conducted within the past twelve months;
- b. a developmental history of the student that includes a summary of his or her demographic, developmental, educational, and medical history obtained from a parent or primary caregiver;
- c. record of observation of at least thirty minutes in the classroom or in student's daily setting conducted by a member of the evaluation team who is knowledgeable of health impairments;
- d. a written report of a medical examination conducted within the past twelve months by a licensed physician that provides a diagnosis and description of the student's current health status;
- e. a norm-referenced or criterion-referenced measure of academic achievement or developmental assessment individually administered within the past six months; and
- f. Documentation of the evidence that the student's "other health impairment" adversely affects his or her educational performance.

L. Traumatic Brain Injury

1. Definition

Traumatic Brain Injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that

adversely affects a student's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

2. Eligibility Criteria

A multidisciplinary evaluation team shall include a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist in addition to a speech-language therapist knowledgeable in the education of students with traumatic brain injury.

This multidisciplinary team may determine that the student has a disability of traumatic brain injury and is eligible for special education and related services, if appropriate, if the evaluation information collected from multiple sources verifies:

a. The existence of traumatic brain injury has been diagnosed by a licensed physician. Or, in the absence of an existing medical diagnosis or a prior diagnosis of a traumatic brain injury, both of the following are furnished:

(1) a documented history that evidences trauma to the head resulting in impairments according to the definition of the term "traumatic brain injury" (see above) and

(2) a cognitive profile that is consistent with the head injury.

b. The injury has resulted in partial or total functional disability and/or psychosocial impairments.

c. The student's traumatic brain injury adversely affects his or her educational performance.

3. Evaluation

The following evaluation components are required:

a. Medical records, if available.

b. Documentation of vision, hearing, and speech-language screening conducted after the injury and within the past twelve months.

c. Review of the developmental history or education records of the student to determine effect on his or her educational performance and psychosocial functioning. Particular attention should be paid to the student's progress prior to and following the suspected injury.

d. Observations in three environments by an observer, other than classroom teacher, that record the nature and severity of the student's learning and/or behavior difficulties. These may include anecdotal records from previous caregivers; a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist; or the parent(s).

e. Assessment of the student's language processing and use (not receptive or expressive vocabulary tests), memory, attention, reasoning, abstract thinking, judgment, problem-solving skills, auditory perception, and visual perception shall be completed by two professionals—a speech-language therapist and either a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist who are knowledgeable of traumatic brain injury.

f. Documentation of the student's physical functioning that includes motor abilities, sensory functions, and the status of seizure activity, medication, and health.

g. A behavior assessment shall include psychosocial, pre-injury functioning and adjustments to impairments.

h. Documentation of the evidence that the student's traumatic brain injury adversely affects his or her educational performance.

H. Autism

1. Definition

Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's education performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experience. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in the section on emotional disability.

2. Eligibility Criteria

The multidisciplinary evaluation team must include a specialist knowledgeable in the education of students with suspected autism; a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist; and a speech-language therapist.

a. This multidisciplinary team may determine that a student has autism and is eligible for special education and related services, if appropriate, if the evaluation information collected across multiple settings and from multiple sources verifies that the student exhibits four of the five following indicators:

- (1) present or previous disturbances in developmental rates and/or sequences;
- (2) present or previous disturbances in responses to sensory stimuli;
- (3) impaired or unusual comprehension and/or use of, speech, language, and communication;
- (4) impaired abilities to relate to people, objects, or events; and
- (5) exhibits a significant rating on a standardized autism rating scale.

- b. The student's autism adversely affects his or her educational performance.

3. Evaluation

The following evaluation components are required:

- a. Hearing and vision screenings conducted within the past twelve months. If there is difficulty in obtaining valid results, placement should proceed based on available information until valid results can be obtained.

- b. A speech and language assessment of functional communication administered by a speech-language pathologist within the past twelve months.

- c. A developmental history of the student that includes a summary of his or her demographic, developmental, educational, and medical history obtained from a parent or primary caregiver.

- d. At least three twenty-minute direct behavioral observations of the student in at least two environments on at least two different days by more than one member of the multidisciplinary evaluation team that records the nature and severity of the student's learning and/or behavioral difficulties. (An observation in the home is strongly encouraged.)

- e. A standardized autism rating scale completed by an adult knowledgeable of the student and interpreted in consultation with a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist.

- f. Other information related to the student's suspected disability must be obtained when the multidisciplinary team determines that the above requirements do not adequately assess the child's current functional level. If a standardized individual measure of intelligence is determined to be a helpful component of the evaluation process, the test must be administered by a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist. A school district may accept a standardized individual measure of intelligence that has been directly administered within the past twelve months by a licensed clinical or counseling psychologist with training in the assessment of children and adolescents, if a standardized individual measure of intelligence is determined to be a helpful component of the evaluation process. An assessment of academic achievement through the use of standardized tests or curriculum-based procedures may also be conducted. An adaptive behavior scale may be useful in describing the student's current level of functioning for program planning and placement decision.

- g. Documentation of the evidence that the student's autism adversely affects his or her educational performance.

N. Multiple Disabilities

1. Definition

Multiple Disabilities means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairments, etc.), the combinations of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deafblindness.

2. Eligibility Criteria

A multidisciplinary evaluation team may determine that the student has multiple disabilities and is eligible for special education and related services, if appropriate, if the student

a. Meets all eligibility requirements for two or more disabilities. Neither of the two disabilities shall be speech or language impairment. The term does not include deafblindness.

b. The student's learning needs are so complex that a single disability cannot be identified as primary.

3. Evaluation

Evaluation components for at least two suspected disability areas shall be completed.

O. Reevaluation

Reevaluations for all categories of disability must be conducted at least once every three years and must be conducted more frequently if conditions warrant, if the parents or school personnel request such reevaluations, or if the student's dismissal from special education is being considered.

1. This reevaluation must be planned and conducted by an IEP team and other qualified professionals as appropriate.

2. The IEP team must review existing evaluation data on the student, including evaluations and information provided by his or her parents, current classroom-based assessments, and observations of teachers and related service providers.

3. On the basis of that review and input from the student's parents, the IEP team must identify what additional data, if any, are needed to determine the following:

a. whether the student continues to have a disability;

b. what the present levels of performance and the educational needs of the student are;

c. whether the student continues to need special education and related services; and

d. whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set forth in his or her IEP and to participate, as appropriate, in the general curriculum.

4. Appropriate, qualified professionals must administer such tests and/or collect other evaluation information to produce the data identified by the IEP team.

5. If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed, the team must document the justification for this determination.

Preliminary Fiscal Impact Statement: None

Statement of Rationale: The proposed amendment reflects the recommendation by the U.S. Office of Special Education concerning the adoption of the federal regulation for the IDEA. The amendments to R 43-243.1 would assist in aligning state regulations with the IDEA and in focusing on appropriately evaluating and identifying all children with disabilities in order to improve outcomes for these children.